

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ADAM SKIRLOCK,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-05-407-T
)	
STACY MORIE BURNS and DAVID SMITH,)	
)	
Defendants.)	

ORDER

On April 8, 2005, Plaintiff filed a “Civil Rights Complaint Pursuant to 42 U.S.C. §1983,” naming Stacy Morie Burns and David Smith as defendants. On April 13, 2005, the matter was referred to United States Magistrate Judge Robert E. Bacharach for preliminary review. On April 27, 2005, Judge Bacharach issued a Report and Recommendation. On May 2, 2005, Plaintiff filed an objection to the Report and Recommendation. The matter is at issue.

In the Report and Recommendation, Judge Bacharach recommended the Court dismiss Plaintiff’s complaint as the two people he named as defendants did not, at the time relevant to his complaint, “act under color of state law.” (Report and Recommendation at 2.) Judge Bacharach’s straightforward recommendation was supported by citation to relevant case law, Briscoe v. LaHue, 460 U.S. 325, 329-30(1983); Bennett v. Passic, 545 F.2d 1260, 1264 (10th Cir. 1976); and Harris v. Champion, 51 F.3d 901, 910 (10th Cir. 1995).

In his objection, Plaintiff did not set forth any facts demonstrating that Ms. Burns or Mr. Smith were acting under color of state law during the time period relevant to his Complaint; Plaintiff did not demonstrate that the legal authority upon which the Recommendation was based was inapplicable or distinguishable;

and Plaintiff did not demonstrate that Judge Bacharach erred in his legal conclusion. Rather, Plaintiff attempted to argue the merits of his Civil Rights Complaint and re-urge his request for relief. (Objection at 2.)

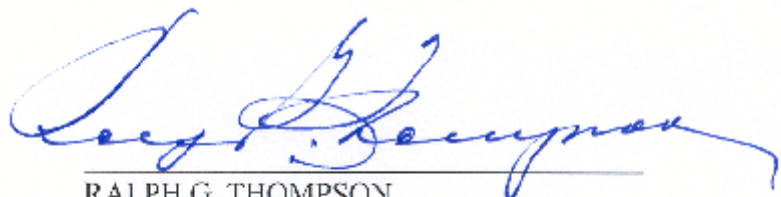
Upon review of the matter, the Court concludes, for the reasons cogently set forth in the Report and Recommendation, neither Ms. Burns (a witness in Plaintiff's criminal case) nor Mr. Smith (Plaintiff's court-appointed attorney) was acting under color of state law. Therefore, the Court finds that Judge Bacharach correctly recommended that Plaintiff's Civil Rights Complaint be dismissed for failure to state a claim upon which relief can be granted.

In addition, as set forth in the Report and Recommendation, the Court further finds that, upon affirmance or waiver of the right to appeal, this dismissal should count as a "prior occasion" for purposes of the Prison Litigation Reform Act, 28 U.S.C. §1915(g).

CONCLUSION

For the foregoing reasons, the Court ADOPTS the April 27, 2005, Report and Recommendation in its entirety; OVERRULES Plaintiff's May 2, 2005, objection thereto; and DISMISSES WITHOUT PREJUDICE Plaintiff's Civil Rights Complaint.

IT IS SO ORDERED this 19th day of May, 2005.



RALPH G. THOMPSON
UNITED STATES DISTRICT JUDGE